IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
And
THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

WP No. 458 of 2007

Between :

Avinash Mohanty IPS .. Petitioner

And

Union of India rep. By Secretary, Ministry of Home Affairs, North Block, New Delhi –1 and four Others .. Respondents

Dated : March, 2007

JUDGMENT (per JC,J)

Aggrieved by an order in OA No. 286 of 2006, dated 24.11.2006 on the file of the Central Administrative Tribunal, Hyderabad, dated 24.2.20066, the unsuccessful applicant therein preferred the present writ petition. The factual background of this litigation is as follows:

The petitioner appeared for the Civil Services Examination for the year 2004 conducted by Union Public Service Commission (UPSC). The petitioner asserted in the affidavit filed in support of the writ petition that he secured 45th position in the combined merit list prepared by UPSC for the above mentioned examination. The petitioner further asserted :

> "…. As per the merit list, the petitioner ranks First among the candidates who were domicile to Andhra Pradesh which could be considered as insider candidate for A.P. and ranks 2nd amongst the candidate opting for IPS in the entire country."

These assertions are not controverted by the respondents either before the Tribunal or in this court in their counter affidavit.

The petitioner was given an offer of appointment letter dated 11.2.2005 which offer he accepted by his letter dated 19.11.2005. Admittedly, two successful candidates appointed to the Indian Police Service were allotted to the State of Andhra Pradesh from out of the successful candidates

in the abovementioned 2004 examination.

The petitioner in his application for the said examination claimed that his case to be considered for the allotment to the Home State i.e., Andhra Pradesh in the event of his appointment into the service.

Direct recruitment to the Indian Police service is made under The Indian Police Service (Recruitment) Rules, 1954. The Indian Police service is one of the services constituted under the All India Services Act, 1951. Recruitment to the Indian Police Service is governed by the rules called Indian Police Service (Recruitment) Rules, 1954. The said rules are made by the Central Government in exercise of the power under sub-section (4) of Section 3 of the All India Services Act, 1951. Under Rule 4, various modes of recruitment to the said service are prescribed, one of them being by a competitive examination. Under Rule 7, the procedure for making the recruitment through a competitive examination is indicated. In exercise of the power conferred under Rule 7 sub-rule (2), the Government of India made regulations called the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955. Regulation 9 of the above mentioned Regulations stipulates 15% and 7-1/2% of the available vacancies shall be reserved for candidates who are members of the schedule castes and schedule tribes respectively. With effect from the year 1994, apart from the abovementioned reservation, another 27% of the available vacancies are reserved in favour of backward classes. The Government of India made another set of rules called “Indian Police Service (Cadre) Rules, 1954. Under Rule 3 of the said rules, separate cadres of the police officers belonging to the Indian Police Service are to be constituted for each State or group of states. Under Rule 4, the strength of such cadre of a State or group of States is to be determined by the Central Government by a Regulation. Under Rule 5, the allocation of the officers of the Indian Police Service to the various cadres is required to be made by the Central Government in consultation with the State Government concerned.

The admitted practice in this regard is the concerned state government place the information before the Union of India regarding the number of vacancies that are likely to arise in the cadre of the State. Basing on such information, the Union of India calls upon the UPSC to conduct the competitive examination for filling up of the correct of such number of posts as are likely to arise in the next year.

Admittedly, the Civil Services Examinations, 2004, was conducted for the purpose of filling up of two posts of officers in the Indian Police Service of Andhra Pradesh cadre along with various other vacancies belonging to various other cadres' and services, the details of which may not be necessary for the present purpose.

The 4th respondent herein and another person were allotted to the cadre of Andhra Pradesh by the 1st respondent. The 4th respondent obtained 201 position in the overall merit list in the examination conducted by UPSC and declared selected for Indian Police Service under the reserved quota meant for other backward classes.

The grievance of the petitioner is that though he secured a much higher rank in the overall merit list than the

4th respondent, ignoring his claim, the 1st respondent chooses to allotted the 4th respondent to the cadre of Andhra Pradesh.

Under Rule 5 of The Indian Police Service (Cadre) Rules, 1954, the allocation of the officers to the various cadres is mandated to be made by the Central Government in consultation with the concerned State Government.

> **5. Allocation of members to various cadres.-**
> **5(1)** The allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with State Government or State Governments concerned.
> **(2)** The Central Government may, with the concurrence of the State Governments concerned transfer a cadre officer from one cadre to another cadre."

On a plain reading of the rule, the rule appears to confer an unbridled discretion on the Union of India in making the allocation of the officer to IPS to any one of the cadres constituted. But whether the Union of India has such unbridled discretion is a question in our view which is no more *res integra* and covered by a decision of the Supreme Court in **Union of India v. Rajiv Yadav**[1]**.** Before we examine the ratio of **Rajiv Yadav's case (supra 1)**, it is also profitable to take note of a Semi Official Letter dated 30/31 May 1985 of the Government of India, Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pensions bearing letter No. S.O. 13013/5/84-AIS(1). The said letter was taken note of even by the Supreme Court both in **Rajiv Yadav's case (supra 1)** and in **Union of India v.**

Mhathung Kithan[2]'s case. The Supreme Court examined the history and background, the substance and the legal efficacy of the said letter. We do not propose to extract the entire content of the letter here except the relevant paragraphs of the said letter.

At para 3 it is stated that ***"the broad principles of allocation on the basis of roster system would be as follows :***

(1) The vacancies in every cadre will be earmarked for `outsiders' and `insider' in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during allocation, the break-up of vacancies in a cadre between `outsiders' and `insiders' will be calculated following the cycle of `outsider', `insider', `outsider'.

(2) The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in the various cadres according to the prescribed percentage. For purpose of this reservation, Scheduled Castes and Scheduled Tribes will be grouped together and the percentages will be added. Distribution of reserved vacancies in each cadre between `outsiders' and `insiders' to be done in the ratio of 2:1. This ratio will be rationalized by following a cycle `outsider', `insider', `outsider' as is done in the case of general candidates.

Allocation of `insider', both men and women, will be strictly according to th ranks, subject to their willingness to be allocated to their home States."

The other portions of the letter will be considered at the appropriate place in the judgment.

Coming to the efficacy of this letter, it is the stand of the Union of in its counter affidavit filed before the Tribunal in OA No. 286 of 2006 at para 1 the Central Government is the sole authority to allocate the candidates. Thoug not expressly stated in the said counter affidavit, but it is suggested at pa purporting to draw strength from an authority of the Supreme Court in **G.Ferna v. State of Mysore[3]** and also in **Union of India v. S.A.Abbas[4]** that guidelines do not confer upon Government employee a legally enforceable righ

Before we examine the facts and merits of the case, we are opinion that the ratio of the above referred two decisions is required t understood. In our view, **Rajiv Yadav's case (supra)** never laid down any pri that the above mentioned letter has no legal efficacy. In fact, the Administ Tribunal took such a view in its decision the correctness of which was challe before the Supreme Court by the Union of India. At para 4 of the said judgment Lordships took note of the conclusion of the Administrative Tribunal in the foll words :

"(4) THE tribunal came to the conclusion that the

letter dated 31/5/1985 (quoted above) was only an interdepartmental communication and there being no other notification/order/circular issued by the central government notifying the principles of allocation as a policy-decision, the said letter could not be taken to be an executive order of the government laying down the so-called "roster System" providing for the principles of allocation. It was, therefore, held by the tribunal that the contents of the letter dated 31/5/19855 did not have any legal sanction to be considered as "established policy guidelines in the matter". …..

At para 5 the Supreme Court made a categoric statement that ***"W not inclined to agree with the same."*** The Supreme Court further examine scheme of Rule 5 of the Cadre Rules of Indian Administrative Service which is *i materia* with the Indian Police Service (Cadre) Rules, 1954 and held as follows

(5) …….. Rule 5 of the Cadre Rules provides that the allocation of the members of the INDIAN ADMINISTRATIVE SERVICE to various cadres shall be made by the central government in consultation with the State government or the State governments concerned. Sub-rule (2 of Rule 5 further provides that a cadre officer can be transferred from one cadre to another. When a person is appointed to an all-India Service, having various State Cadres, he has no right to claim allocation to a state of his choice or to his home State. The central government is under no legal obligation to have options or even preferences from the officer concerned. Rule 5 of the Cadre Rules makes the central government the sole authority to allocate the members of the service to various cadres. It is not obligatory for the central government to frame rules/regulations or otherwise notify "the principles of allocation" adopted by the government as a policy. The letter dated 31/5/1985 shows that the central government has always been having guidelines either in the shape of "limited zonal preferences system" or "roster System" for the exercise of its discretion under Rule 5 of the Cadre Rules. Simply because the principles of allocation called "roster System" were not notified, it is no ground to hold that the same are *non est* and the central government cannot follow the same. In any case the "roster System" has stood the test of time. It was operative during the years 1966 to 1977 and again it is being followed from 1985 batch onwards. The fact that the "roster System" is being followed in practice by the central government for all these years, is in itself a sufficient publication of its principles."

In our view the Supreme Court never held that the Union of Indi

an unbridled or unfettered discretion in the matter of allocation of succ candidates at the IAS/IPS recruitment. The Supreme Court of course took note fact that the language of Rule 5 did not oblige the Union of India to call for options or preference of the officers in the process of the allocation to the va cadres. It further took note of the fact that though there is no such obligation (fro content of the above mentioned letter), it is established that the Central Goverr had always been having guidelines for the exercise of its discretion under Rul the Cadre Rules. The Supreme Court categorically held disagreeing wit Administrative Tribunal that the mere fact the principles of allocation contained said letter are not notified cannot lead to a conclusion that the same are *non es* the Central Government cannot follow the same. The Supreme Court further a that the very fact that the roster system contained in the said letter has been foll in practice by the Union of India for a long period is in itself a sufficient publicat its principles. In other words, the content of the letter is as good as a notified rul para 6 of the said judgment, the Supreme Court examined the purpose c principles contained in the said letter and observed that "***the principles of a allocation thus ensure equitable distribution of reserved candidates amo the cadres.***"

It is very vehemently argued by the learned Additional Solicitor Ge Sri Gopalan relying on the earlier portion of para 5 extracted above, that the cc of the letter does not create any enforceable right in favour of any one of the sel candidates and this Court should not undertake an examination of the correctn the allocation of either the writ petitioner or the 4th respondent. We regre inability to accept the submission made by the learned Additional Solicitor Ger In our view when the Supreme Court said that Rule 5 of the Cadre Rules make sole authority to allocate the members, the Supreme Court took note of the lang of the rule. The Supreme Court also took note of the fact that such un-cana discretion is required to be regulated as otherwise such un-canalized authority v lead to arbitrary administrative action, which is incongruous with the requireme the Rule of Law enshrined under Article 14 of the Constitution of India.

The question in the context of the above mentioned letter is not wh the said letter confers any enforceable right on any candidate like the petitione whether the Union of India is required to act fairly, in a manner which is not art and in accordance with the established practice followed by it over a long per time in making such allocations. It was held by the Supreme Court in **Ra Dayaram Shetty v. International Airport Authority of India**[5] as follows:

" …….. It is a well settled rule of administrative law that an

executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Vitarelli v. Seaton (1959) 359 US 535 : 3 L Ed 2d 1012 where the learned Judge said :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. ..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. .....This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

This Court accepted the rule as valid and applicable in India in A. S. Ahluwalia v. State of Punjab (1975) 3 SCR 82 : (AIR 1975 SC 984) and in subsequent decision given in Sukhdev v. Bhagatram, (1975) 3 SCR 619 : (AIR 1975 SC 1331), Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanating from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's Administrative Law 4th Edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set forth by Herry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in Democracy, Equality and Freedom "substantial agreement

> in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege."

Once again the Supreme Court considered the legal efficacy of the letter in **Mhathung Kithan's case (supra).** At para 8 of the said judgmen Supreme Court held that "***the Tribunal was, therefore, not right in disturbin implementation of this policy as per the roster.***"

From the content of letter (extracted earlier), the vacancies in State cadre are required to be filled up in the ratio of 2:1 by Outsider and In respectively. The nature of the said roster is stated by the Supreme Court at p of **Mhathung Kithan's case.**

> "6. In the light of this policy a continuous 30-point roster was provided starting from the examination held in 1983. The roster follows the cycle, "outsider, insider, outsider, outsider, insider, outsider ..". In any given year the roster starts with the point where the roster ended in the previous year…."

This position has not changed even subsequent to **Mhat Kithan's case.** All the parties before us are in agreement on this aspect.

Admittedly, the said 30-point roster even in the case of Andhra Pra commenced from the year 1983. According to the writ petitioner the current 30 roster commenced with the allotment of successful candidates belonging to th in the year 1994 Central Services Examination and from that point 28 candi belonging to the IPS Cadre have been allotted to the State of Andhra Pradesh t date of the allocation in dispute before us. According to the petitioner, the 29th and 30th points of the said roster are filled up by the successful candidates 2004 CSC Examination.

Both in the original application and in the affidavit filed in support present writ petition, the petitioner made a categoric averment which read as foll

> "That in the current roster in operation from 1994 CSE, in respect of AP 28 candidates have been allotted to State of A.P. till Civil Services Examination 2003, out of which 16 belong to reserve

category and 12 belong to non reserve category called general candidates as shown below :

ALLOTMENT AS PER ROSTER
CANDIDATE OF 94 CSE

CSE Year	Total as in Roster	Insider				Outsider			
		OC	BC	SC/ST	TOTAL	OC	BC	SC/ST	TOTAL
1994	6		1	1	2	2	1	1	4
1995	5	1	1		2	1	1	1	3
1996	6	2			2	1	2	1	4
1997	2				Nil	2			2
1998	1		1		1				Nil
1999	1				Nil	1			1
2000	1				Nil			1	1
2001	1			1	1				Nil
2002	1				Nil		1		1
2003	4		1		1	2		1	3
Total	**28**	**3**	**4**	**1**	**9**	**9**	**5**	**5**	**19**

Neither in the counter affidavit filed before the Tribunal nor counter affidavit filed before this Court the 1st respondent ever made a c statement either accepting or denying the allegation of the petitioner th candidates belonging to IPS have been allotted in the current roster by the time allocation of the petitioner and the

4th respondent herein to the various State cadres.

On the other hand, in the counter affidavit filed by the 1st respo dated 23.2.2007 in the present writ petition at para 28, it is stated as follows :

> "28. With regard to averment made in para 10, it is submitted that the current roster is in operation since 1983 and not from 1994 as submitted by the applicant. The averments made by the applicant in para; 10 is not factually correct. The correct position of the vacancy filled up from Civil Service Examination 1994 to 2003 are given in the following table :

S.No.	CSE	Total Vacancy	Insider			Outsider		
			GEN	OBC	SC/ST	GEN	OBC	SC/ST
1.	1994	7	-	1	1	3	1	1
2.	1995	5	1	1	-	1	1	1
3.	1996	6	2	-	-	1	2	1
4.	1997	2	-	-	-	2	-	-
5.	1998	1	-	1	-	-	-	-
6.	1999	1	-	-	-	1	-	-
7.	2000	1	-	-	-	1	-	-
8.	2001	1	-	-	1	-	-	-
9.	2002	1	-	-	-	-	1	-

10.	2003	4	-	1	-	2	-	1
TOTAL		**29**	**3**	**4**	**2**	**11**	**5**	**4**

The respondent's skirted the question. On an examination of the material on record, i.e., the pleadings of the respondent both before the Tribuna this Court, we are of the confirmed opinion that the

1st respondent misled both the Tribunal and this Court. We shall give our rea for this statement a little later. In view of the equivocation in the pleadings respondent No.1, we thought it fit to ascertain the real factual position by summ the original roster maintained by the 1st respondent and by an order dated 6.3 we summoned the original roster. The relevant portions of the roster which pert the State of Andhra Pradesh were photocopied under an order of this Cour made part of the record. With great dissatisfaction we must place on record th roster maintained by the Union of India leaves much to be desired. Entries are in pencil occasionally. With that kind of maintenance of the record, the assert the Union of India that this Court should not undertake an examination allocation made to the cadres as under Rule 5 of the Cadre Rules the Governm India is the sole authority in our view is only to be examined in the c perspective.

From the said roster, it is clear that the roster commenced in the 1983. The 1st 29-points were filled up by the year 1988. The 30th point came filled up by a successful candidate of 1989 Civil Service Examination and the 30-point roster commenced from the year 1989 with seven other succ candidates of 1989 Civil Service Examination. The said roster was completed t 29th point by the allotment of eight successful candidates belonging to the I 1993. The 30th point of the said roster (2nd cycle) was filled up with a succ candidate belonging to IPS of 1994. From 1994, the 3rd cycle of 30-point commenced. Six successful candidates of IPS were allotted to the 1st six poi the fresh roster. In other words, though in the year 1994, seven succ candidates belonging to the IPS were allotted to the cadre of Andhra Pradesh, t candidate was allotted against the last point (30th point) in the previous roste other six were allotted against the

1st six points of current roster (3rd of the cycles commencing from 1983). allotment made in the current roster according to the records maintained is as fc :

Sl. No.	Point in the Roster	Whether for "Outsider" or Insider"	Year of Examination	Remarks
1	1	Outsider	1994	
2	**2**	**Insider**	**1994**	
3	3	Outsider	1994	
4	4	Outsider	1994	
5	**5**	**Insider**	**1994**	
6	6	Outsider	1994	
7	7	Outsider	1995	
8	**8**	**Insider**	**1995**	
9	9	Outsider	1995	
10	10	Outsider	1995	
11	**11**	**Insider**	**1995**	
12	12	Outsider	1996	
13	13	Outsider	1996	
14	**14**	**Insider**	**1996**	
15	15	Outsider	1996	
16	16	Outsider	1996	
17	**17**	**Insider**	**1996**	
18	18	Outsider	1997	
19	19	Outsider	1997	
20	**20**	**Insider**	**1998**	
21	21	Outsider	1999	
22	22	Outsider	2000	
23	**23**	**Insider**	**2001**	
24	24	Outsider	2002	
25	25	Outsider	2003	
26	**26**	**Insider**	**2003**	
27	27	Outsider	2003	
28	28	Outsider	2003	
29	**29**	**Insider**	**2004**	
30	30	Outsider	2004	

It is obvious from the above extract that the 29th and

30th points of the roster which commenced in 1994 were allotted to two succ candidates in the 2004 Examination as asserted by the petitioner. It is indicate the 29th point is an Insider point and the

30th point is an Outsider point.

We shall now demonstrate the inconsistencies in the pleadings respondents. It is admitted in para 22 of the counter affidavit filed by the respon in the OA that from the Civil Service Examination 2004, a total number candidates had to be allotted to the IPS cadre of Andhra Pradesh. It is al admitted fact and asserted by the respondents in the counter filed before the Tri at para 8 that from Civil Service Examination 1994, 27% of the vacancie

required to be reserved in direct recruitment in all, All India Services which inc IPS by candidates belonging to other backward classes. Its further stated b respondents in para 22 of the counter filed before the Tribunal as follows :

> "…. As per 30 Point Reserve Roster, the Insider vacancy had to be filled up by allocation of an OBC category candidate. As such, the other vacancy meant for general candidate had to be filled up by allocation of an outsider general candidate."

We searched in vain through the entire counter affidavit filed befo Tribunal to find any assertion as to the two roster points that are filled up i instance case, but the respondents never made any clear statement in this re However, in the counter affidavit dated 23.2.2007 filed before this Court i present writ petition, it is stated at para 28 as follows :

> "28. With regard to averment made in para 10, it is submitted that the current roster is in operation since 1983 and not from 1994 as submitted by the applicant. The averments made by the applicant in para; 10 is not factually correct. The correct position of the vacancy filled up from Civil Service Examination 1994 to 2003 are given in the following table :

S.No.	**CSE**	**Total Vacancy**	**Insider**			**Outsider**		
			GEN	**OBC**	**SC/ST**	**GEN**	**OBC**	**SC/ST**
1.	1994	7	-	1	1	3	1	1
2.	1995	5	1	1	-	1	1	1
3.	1996	6	2	-	-	1	2	1
4.	1997	2	-	-	-	2	-	-
5.	1998	1	-	1	-	-	-	-
6.	1999	1	-	-	-	1	-	-
7.	2000	1	-	-	-	1	-	-
8.	2001	1	-	-	1	-	-	-
9.	2002	1	-	-	-	-	1	-
10.	2003	4	-	1	-	2	-	1
TOTAL		**29**	**3**	**4**	**2**	**11**	**5**	**4**

From the content of the above extracted portion of the counter affi it is clear that though the respondents do not make any categoric statement rega the roster point against which the allocation of the 4th respondent to the cad Andhra Pradesh is made they give an impression that from 1994 Civil Se Examination, 29 candidates belonging to the IPS have been allotted to the St Andhra Pradesh. They impliedly dispute the averments made by the petitio para 10 of his affidavit that only 28 candidates were allotted against roster p which commenced in the year 1994 and give an impression and it was speci argued by the respondents that in fact of the above mentioned 29 candidates

been allotted against the 29 points of the current roster. In which case th candidates that were allotted from out of the successful candidates of 2004 Service Examination are necessarily required to be Outsiders as admittedly th point in the running roster of Outsider-Insider-Outsider would be available only Outsider and the next roster necessarily commences with an Outsider. In which it is not known how the 4th respondent who is admittedly an Insider came allotted against one of the Outsider vacancies.

On the other hand, if the petitioner's averments are accepted were bound to accept as it is established from the record of which we have al take note earlier that the vacancies available for the successful candidates of I 2004 Civil Service Examination insofar as the Andhra Pradesh are concerne the 29th and 30th point of the running roster of Outsider-Insider-Outsider neces the 29th point is an Insider point and the 30th point is an Outsider point.

Admittedly both the petitioner and the 4th respondent are Ins insofar as the State of Andhra Pradesh is concerned, while the 4th respondent belongs to OBC category, the petitioner belongs to OC cate Then the question is whether the 29th vacancy which is available for an Insi required to be earmarked for Insider OBC or an Insider OC.

The Union of India consistently maintained the stand that there reservation in the matter of allocation of candidates to the various cadres, bu matter of policy the broad principle of allocating candidates belonging to va reserved and unreserved categories in the same proportion in which the required to be recruited in the All India Services is maintained. Such a policy w fact considered in

Rajiv Yadav's case (supra 1) at para 6 (extracted hereunder for ready refer and approved by the Supreme Court while holding that it is not a reservation wh required to be tested on the anvil of Article 16(4), but a policy to achieve an equ distribution of candidates belonging to various categories either reserve unreserved all over the country.

> "(6) WE may examine the question from another angle. A selected candidate has a right to be considered for appointment to the INDIAN ADMINISTRATIVE SERVICE but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service. A member of an all-India Service bears liability to serve in any part of India. The principles of allocation as contained in clause (2 of the letter dated 31-5-1985, wherein preference is given to a Scheduled Caste/scheduled Tribe candidate for

> allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of Article 16 (4 of the Constitution of India does not arise. It is common knowledge that the Scheduled Caste/scheduled Tribe candidates are normally much below in the merit list and as such are not in a position to compete with the general category candidates. The "roster System" ensures equitable treatment to both the general candidates and the reserved categories. In compliance with the statutory requirement and in terms of Article 16 (4 of the Constitution of India 221/2% reserved category candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. But for the "roster System" it would be difficult rather impossible for the Scheduled Caste/scheduled Tribe candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres."

The question is whether such an equitable distribution is made current roster that commenced from 1994.

We have already seen earlier that the petitioner established that 28 candidates have been allotted from the IPS to the cadre of Andhra Pra against the 1st 28 points of the current roster and his assertion at para 10 affidavit filed in the present writ petition which is identical with the assertion ma para 4(9) of the OA No. 286 of 2006. From the table given in both the a mentioned pleadings, according to the petitioner a total of 12 – OC candidates allotted against the said 28 points and 9 candidates belonging to BC were allo Of the 28 candidates allotted to the State of Andhra Pradesh against the 1st 28 p in the current roster, (according to the petitioner) 16 candidates belong to res categories either SC, ST or OBC. The respondents do not categorically den allegation, but, on the other hand, give a misleading statement at para 28 counter filed in the present writ petition and give an impression that 29 points been filled up in the current roster and of the said 29, 14 have been filled up OCs, 3 Insider and 11 Outsider and the remaining 15 candidates have been fill with candidates belonging to various reserved categories and therefore the dev if any in the matter of allocation of candidates belonging to reserved categorie general category is only marginal. The learned Additional Solicitor General vehemently argued relying on the earlier judgment dated 3.11.2005 of a Di Bench of this Court in **W.P. No. 8072 of 2004 (G.Srinivas Rao v. Union of I**

that a mathematical exactitude is not required in such matters and ma variations are permissible and such variations would be adjusted over a peri time.

We reject the submission of the learned Addl. Solicitor General fo reasons. We record the total number of candidates allotted to the State of A Pradesh from IPS against the current roster (the 3rd cycle) is only 28 and the 29t 30th points of the current roster that are required to be filled up with the successful candidates of the 2004 Civil Service Examination. That being the the distribution of the vacancies between the reserved and unreserved categor not in conformity with the ratio in which they are required to be allocated and s deviation in the context of the abovementioned facts is far from being margina even according to the respondents, 9 OBCs so far have been allocated to the of Andhra Pradesh prior to the allocation in question. The reservation at the ti recruitment in favour of the OBCs admittedly is 27% in the IPS. With the allocat the 4th respondent, on the ground that the vacancy is earmarked for an Insider would make a total of 10 candidates allocated in the 30 Point roster makin percentage 33 and 1/3rd i.e., a variation of 6% in excess which by any sta cannot be called a marginal variation.

To get over this situation, the respondents resorted to all sorts o mandering in the counter affidavit filed before this Court and the Tribunal taking periods of 2 years, 3 years and 5 years to justify their decision to allot th respondent to the State of Andhra Pradesh on the ground that according to the point available it was an Insider OBC roster point.

The roster points are not demonstrated to be earmarked in the co of reserved category and unreserved category candidates. The letter 30.5.1985 which deals with this aspect at para 3 is as follows :

> "3 (2) …… Distribution of reserved vacancies in each cadre between `outsiders and `insiders' to be done in the ratio of 2:1. This ratio will rationalized by following a cycle `outsider', `insider', `outsider' as is done in the case of general candidates."

How exactly the respondents wish to operate the above extracted portion o guidelines which they are bound to follow and profess to have scrupulously follo is not very clear. The roster produced before us dealing with the reserve ros absolutely silent regarding the points assigned to the various reserved categ from 1983 onwards. It is incomplete and it is maintained only with effect from 2 The allotment made prior to that is not borne out by the Register nor any other r is placed before us to substantiate the contents of the counter affidavit filed b

respondents.

In the circumstances, we are of the opinion that there is arbitrariness in the operation of the roster system and in the equitable distribut the available vacancies between Insiders and Outsiders insofar as the Sta Andhra Pradesh is concerned apart from the fact that at least in filling up of th 30 vacancies ending with the allocation by which the 4th respondent came allotted to the cadre of Andhra Pradesh there is absolute arbitrariness even allocating the successful candidates of IPS to A.P. cadre in the context c candidates belonging to reserved and unreserved categories. This kind of art exercise if left unchecked on the ground that a candidate selected to the All Service is bound to serve anywhere in India and has no right to claim that his should be considered either to his Home State or a State of his choice would lead to undesirable consequences like nepotism and corruption. It is worth recording here that though it is not stated specifically in the counter affidavit Desk Officer who is responsible for a preliminary exercise of allocation of IPS of to various cadres who has been in that position for a long time has since transferred after the petitioner commenced this litigation, the respondents very v do not disclose the reason, the petitioner obviously cannot prove on recor reasons which prompted such a shift. We are inclined to believe that eve respondents are convinced that there is something rotten in the process however do not wish to acknowledge the same. The respondents seek to cov all this taking resort to a high principle that a candidate selected to All India Se cannot choose his cadre. We have no quarrel with the generic principle. But, i view such principles are meant to promote public good and a Constitu Government, but not to avoid scrutiny of the misdeeds of the administration. I view, that's exactly the effort of the respondents herein.

In the circumstances, for the reasons mentioned above, we are of the op that the writ petition is required to be allowed quashing the allotment of th respondent to the State of Andhra Pradesh and directing the 1st respondе reconsider the allocationof the petitioner and the 4th respondent in accordance law.

Accordingly, the writ petition is allowed to the above effect.

J.Chelamesv

P.Swaroop Rec

knk

22nd March, 2007.

After the order is pronounced today, the learned counsel for the peti prayed that the 1st respondent be directed to complete the exercise, as was dir in the judgment, within a stipulated period.

Heard the learned Assistant Solicitor General of India.

In the circumstances, we are of the opinion that the 1st respondent be dir to complete the exercise of allocation of the petitioner and the 4th responde accordance with law, pursuant to this order, within a period of four weeks fro date of receipt of a copy of this order.

Registry is directed to make copies of the roster, referred to in this judg part of the record of this Court and also to append a copy of the same to this while dispatching the order.

J.Chelames

P.Swaroop Re

Note: Issue copy of this order in two days.
(bo)
mrk/knk
22nd March, 2007.

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[1] (1994) 6 SCC 38
[2] (1996) 10 SCC 562
[3] AIR 1967 SC 1753
[4] 1994 SCC (L&SS) 230
[5] AIR 1979 SC 1628 at 1635 para 10